



LIQUOR & TOBACCO ADVISORY BOARD
Tuesday, April 19, 2016
5:30 P.M. – City Council Chambers
Rockford City Hall, 425 East State Street

Minutes on Website: <http://rockfordil.gov/community-economic-development/construction-development-services/land-use-zoning/zoning-board-of-appeals.aspx>

Present:

ZBA Members: Alicia DiBenedetto-Neubauer
Kimberly Wheeler-Johnsen
Dan Roszkowski
Scott Sanders
Craig Sockwell
Tom Fabiano

Absent: Melissa Beckford

Staff: Todd Cagnoni – Director, Community & Economic Development
Scott Capovilla – Zoning and Land Use Administrator
Angela Hammer - Assistant City Attorney
Marcy Leach - Public Works
Sandra Hawthorne - Administrative Assistant
Lafakeria Vaughn - Assistant City Attorney
Matt Knott – Fire Department

Others: Kathy Berg - Court Stenographer
Applicants and Interested Parties

|
Sandra Hawthorne explained the format of the meeting will follow the Boards Rules of Procedure generally outlined as:

The Chairman will call the address of the application.

- The Applicant or representative will come forward and be sworn in.
- The Applicant or representative will present their request before the Board
- The Board will ask any questions they may have regarding this application.
- The Chairman will then ask if there are any Objectors or Interested Parties. Objectors or Interested Parties are to come forward at that time, be sworn in by the Chairman, and give their name to the Zoning Board of Appeals secretary and the stenographer
- The Objector or Interested Party will present all their concerns, objections and questions to the Applicant regarding the application.

- The Board will ask any questions they may have of the Objector or Interested Party.
- The Applicant will have an opportunity to rebut the concerns/questions of the Objector or Interested Party
- No further discussion from the Objector or Interested Party will occur after the rebuttal of the Applicant.
- The Board will then discuss the application and a vote will be taken.

It was further explained to the public in attendance, applicants, objectors and interested parties that this meeting is not a final vote on any item. The date of the Codes & Regulations meeting was given as Monday, April 25, 2016, at 5:30 PM in City Council Chambers of this building as the second vote on these items. The public in attendance, applicants, objectors and interested parties were instructed that they could contact the Zoning Office for any further information and the phone number was listed on the top of the agenda which was made available to all those in attendance. The City's web site for minutes of this meeting are listed on the agenda as well.

The meeting was called to order at 6:28 PM. There was no vote to approve the March minutes of the Liquor & Tobacco Advisory Board since a meeting was not held.

016-LTAB-002

Applicant
Ward 06

3209 11th Street

Ankit Patel / Jai Shiva 7 LLC d/b/a Marathon

Sale of packaged liquor and the **Sale of tobacco products** in conjunction with a gas station and convenience store in a C-3, General Commercial Zoning District

The Applicant's attorney requested that this item be Laid Over to the May meeting.

A **MOTION** was made by Tom Fabiano to **LAY OVER** the sale of packaged liquor and the sale of tobacco products in conjunction with a gas station and convenience store in the name of Ankit Patel / Jai Shiva 7 LLC d/b/a Marathon in a C-3, General Commercial Zoning District to the May 17th meeting. The Motion was **SECONDED** by Alicia Neubauer and **CARRIED** by a vote of 6-0.

016-LTAB-003

Applicant
Ward 01

2975 North Perryville Road

James John/Grand Mobil Inc. d/b/a Grand Mobil Inc.

Sale of packaged liquor and the **Sale of tobacco products** in conjunction with a gas station and convenience store in a C-2, Limited Commercial Zoning District

The subject property is located on the southeast corner of North Perryville Road and Olde Creek Road. James John, Applicant, reviewed his request for the sale of packaged liquor and the sale of tobacco products.

Staff Recommendation is for Approval with (8) conditions. Objectors or Interested Parties were present.

A **MOTION** was made by Craig Sockwell to **APPROVE** the sale of packaged liquor and the sale of tobacco products in conjunction with a gas station and convenience store in the name of James John / Grand Mobil Inc. d/b/a Grand Mobil Inc. in a C-2, Limited Commercial Zoning District at 2975 North Perryville Road. The Motion was **SECONDED** by Kim Johnsen and **CARRIED** by a vote of 6-0.

Approval is subject to the following conditions:

1. Meeting all applicable building and fire codes.

2. Compliance with all City of Rockford Tobacco Codes and Liquor Codes.
3. That the window signage shall not exceed 20% of window area and all temporary outdoor signs shall be removed.
4. The sale of liquor shall be limited to the interior floor plan that will not exceed more than 10% of floor area.
5. The sale of rose tubes, airplane-sized bottles and any other products that can be deemed to be easily manufactured into crack pipes is prohibited.
6. The sale of water pipes and "huka" or "hookah" pipes are prohibited.
7. That the windows shall not be covered with bars or other devices that block the windows.
8. All signage on property must come into compliance with the current Sign Ordinance including removal of existing free-standing signs to be replaced with Landmark Style signs by August 1, 2016.

016-LTAB-004

Applicant

Ward 03

1132 Auburn Street

Michael J. Dupre / The Rathskeller & Sausage Shop, Inc. d/b/a The Rathskeller & Sausage Shop

Sale of liquor by the drink in conjunction with a restaurant and gaming facility with an outdoor seating area in a C-2, Limited Commercial Zoning District

The subject property is located on the southeast corner of Toner Avenue and Auburn Street. Michael Dupre, Applicant, reviewed his request for liquor sales by the drink. Mr. Dupre purchased the establishment in early 2016. Attorney Hammer asked if he reviewed Staff's report and conditions and he stated he has not. He was given an opportunity to read them during the meeting.

He would like to amend hours of operation to be open until 2:00 AM 7 days a week. He told Attorney Hammer he will be serving food until 2:00 AM. Attorney Hammer informed him that alcohol cannot be served until 9:00 AM on Sundays.

Regarding Staff condition that there will be no new lease agreement for the existing billboard and that the billboard and structure shall be removed, Mr. Dupre stated he no longer owns the billboard that is on his property. He stated they do not have a lease for this billboard. Mr. Capovilla informed him that if this is correct and the billboard is not on his property, Mr. Dupre has to provide documentation that this was parceled off separately. In addition, if the property was parceled off separately, having a billboard on this property violates ordinance. Mr. Capovilla encouraged the Board to leave this issue up to the Legal and Planning Departments to determine what would be best for a lease agreement and document pertaining to this as it sounds like this situation is illegal. He further explained that billboard companies customarily pay the owner of the property a fee to have a billboard on their property. If there was a sale of land, the City needs to have written proof.

Mr. Dupre then stated there was an arrangement for a lifetime use of the property for this billboard. Mr. Capovilla stated the City requires billboard license renewals and we will check with the owner of the billboard to confirm this or other arrangements. At that time, Mr. Dupre stated he does not care if this billboard is on his property or not. Mr. Capovilla stated Staff will contact the Billboard owner this week before this item comes before the Codes & Regulations Committee.

Staff Recommendation is for Approval with (16) conditions. No Objectors or Interested Parties were present.

A **MOTION** was made by Alicia Neubauer to **APPROVE** the sale of liquor by the drink in conjunction with a restaurant and gaming facility with an outdoor seating area in the name of Michael J. Dupre / The Rathskeller & Sausage Shop, Inc. d/b/a The Rathskeller & Sausage Shop in a C-2, Limited Commercial

Zoning District at 1132 Auburn Street with an amendment to conditions 5, 6, and 7 to change the closing hours to 2:00 AM. The Motion was **SECONDED** by Scott Sanders and **CARRIED** by a vote of 6-0

Approval is subject to the following conditions:

1. Meet all Building and Fire Codes.
2. Compliance with all City of Rockford Liquor Codes.
3. Submittal of a revised interior floor plan that includes the seating arrangement for first floor and lower level of the restaurant and location and number of video gaming machines for Staff review and approval.
4. The sale of liquor by the drink shall be limited to the revised interior floor plan that is approved by Staff.
5. The hours of operation will be limited to 11:00 AM to 2:00 AM Monday through Friday.
6. The hours of operation will be limited to 8:00 AM to 2:00 AM on Saturday.
7. The hours of operation will be limited to 8:00 AM to 2:00 AM on Sunday with no liquor sales before 9:00 AM.
8. Window display signage is limited to 20% of window area.
9. That the windows shall not be covered with bars or other devices that block the windows.
10. The restaurant and a video gaming facility shall not have a cover charge.
11. The restaurant and a video gaming facility shall not have a dance floor.
12. The restaurant and a video gaming facility shall not have any DJs.
13. The restaurant and a video gaming facility shall not operate as a nightclub
14. Submittal of an agreement for Staff review and approval there will be no new lease agreement for the billboard and the billboard and billboard structure will be removed.
15. Must obtain sign permit for the billboard removal.
16. All conditions must be met prior to establishment of use.

016-LTAB-005

Applicant
Ward 01

1626 and 1620 North Bell School Road

Rose Mary L. Provenzano / Cucina Di Rosa, LLC d/b/a Cucina Di Rosa
Sale of liquor by the drink in conjunction with a restaurant and gaming facility in a C-1, Limited Office Zoning District

The subject property is located in the shopping center on the west side of North Bell School Road. Rose Mary Provenzano, Applicant, and Attorney Richard Butera were present. Attorney Butera reviewed the request for sale of liquor by the drink. Ms. Provenzano previous had a small restaurant known as Cannoli Café at this location. When that closed another restaurant moved into this space and has recently vacated. Attorney Butera explained there are existing cameras within the parking lot; however, Ms. Provenzano is open to providing cameras inside the business if required. She would seek a professional security evaluation should the need arise in the future. The bar area will be a small portion of the business as well as the gaming machines. There will be at least 5 employees working as well as a bartender. At all times during the operation either the Applicant or her daughter, who is the Manager, will be on the premises. For the record, Attorney Butera provided copies of Dram Shop insurance, Basset Card Certificate of Completion for bar service and also for food service. He stated outside smoking would be to the left of the building and would not be in an area where customers would be walking or patronizing. There is room for 41 patrons to sit in the restaurant. Ms. Provenzano will be selling pastry styles based on an Italian type bakery and bar as seen in Italy. She is wanting to bring a unique business to Rockford by providing pastry and food that is not seen in other areas. He further stated Ms. Provenzano is in full agreement of Staff conditions including the hours of operation.

Attorney Hammer asked if she was aware of the requirement of 50% sales ratio for food and drinks to which Attorney Butera responded she was. Attorney Hammer pointed out that according to the hours of operation submitted by the Applicant, food service stopped at 9:00 PM 7 days a week. She asked if the restaurant was open until 2:00 AM why food service was discontinued at 9:00 PM. Both Ms. Provenzano and Attorney Butera stated the type of food they serve such as pastries would not be in big demand at late hours. Attorney Hammer then asked if the application was filled out with the intention of applying to

both 1616 and 1620 North Bell School Road. Ms. Provenzano stated that there will be a separate entrance for 1616 for the gaming machines which will be in that location. Attorney Hammer asked how the applicant arrived at the percentages provided. Ms. Provenzano stated they will be open for breakfast, lunch and dinner and felt this would bring the food items to 50%. Attorney Hammer asked the Applicant to verify that video gaming would not be at both addresses to which Ms. Provenzano responded no.

Craig Sockwell asked if the bar area could see into the other rooms. The response was there will be a glass door separating the gaming machines from the restaurants so that people can be seen from the bar. Scott Sanders stated he feels this description is unclear because the Applicant is applying under two addresses. He questioned if a liquor license was issued to the 1620 address, should a gaming license be allowed at a different address. Attorney Hammer stated the concern is that in order to have gaming they must have a liquor license. The liquor license is for 1620; however if the gaming area has a separate address would they be part of the same business. After much discussion it was determined there may have been an error in listing the 1616 address.

Staff Recommendation is for Approval with the following (4) conditions:

1. Compliance with the Liquor Ordinance.
2. Hours of operation are limited to Monday through Saturday 7:00 AM to 12:00 AM; Sunday 7:00 AM to 10:00 PM. Sunday alcohol sales cannot occur until 9:00 AM per the City's Liquor Code.
3. The restaurant shall not have a cover charge, dance floor, any DJ's and live entertainment.
4. The restaurant shall not operate as a night club.

Objectors or Interested Parties were present. Objection letters were received and were attached to the Planning & Zoning report.

Holly Romenesko, speaking as an Objector, was present. She stated she was a homeowner and part of the Home Owners Association. She also submitted a letter of objection included with Staff packet from herself and the Home Owner Association. Ms. Romenesko stated a member of the Staff had bias in the preparation of the Staff Report. She stated a concern with burglary, public drunkenness, noise, fighting, lighting, and decreased property values. She stated there could be increased insurance costs and potential liabilities associated with drunks drowning in the drainage area. Ms. Romenesko felt the applicant is not "reestablishing" at this location because her previous business was a café. She stated they would love to have a café at this location, but not a bar and gaming facility. She stated the previous owner of Vito's closed at 10:00 PM. She felt the proposed business is not an upscale high end Italian restaurant business when comparing when \$25.00 dinners at Vito's to a \$7.50 panini cost.

George Pleshkewych was present as an Objector. He provided information on Red Oak Estates stating the current annual property taxes on 17 lots is \$186,760. He felt if a "casino" affects the value of the neighborhood by as little as 4.2%, the City's share of income from the gaming machines is negated. He stated his concern with head lights at early morning hours and of his concern for the effect a business such as this would have on his two young girls. Mr. Pleshkewych stated if the Applicant had a café style business he would love to frequent that business. He did not understand the concept of a liquor and gaming aspect so close to his residential development. Mr. Pleshkewych further explained that his home is an investment for his family. They chose this affluent neighborhood and researched it prior to purchase. He felt this was a good investment area with the potential for neighborhood development. Mr. Pleshkewych stated they have over 20 young children in their neighborhood and does not feel allowing this development is fair to the existing homeowners.

Dhairiyashil Patil also was present as an Objector. Mr. Patil stated he is not opposed to growth of small businesses in the area, but slot machines and liquor are not conducive to their neighborhood. He reiterated Mr. Pleshkewych's concerns that they have over 25 children in the neighborhood, ranging in age from 2 years to 12 years old. He also spoke of crime spilling into the residential area. Mr. Patil stated although he is not opposed to an upscale restaurant, he feels this type of establishment will attract a negative clientele.

Ms. Romenesko, Mr. Patil and Mr. Pleshkewych provided written copies of their presentations and these are on file.

In response, Attorney Butera stated Ms. Provenzano has had experience with this type of establishment without liquor and gaming and had learned that these have now become a necessary part of being competitive. The Applicant's proposed business is more of a European style where pastries, and a full service restaurant are offered during daytime hours. He further stated there is an establishment right across the road that has a driving range, a very large bar, a very large restaurant and a retail shop that was an existing business when homeowners bought into this subdivision. Ms. Provenzano had a business that was moving forward when it was the Cannoli Café. She is only looking to re-establish what she had and to spark interest in the type of operation that is unique to Rockford. However, she is also practical and has realized that she will not be successful or competitive without gaming and liquor. He stated there are other businesses in this established strip mall as well as the landlord who want this strip mall to succeed.

Scott Sanders asked if the Applicant was willing to put up a sight obscuring fence to prevent lights from spilling into the neighborhood. Attorney Butera replied that his client is a tenant and the landlord has the final say. He stated she would absolutely discuss any concerns or suggestions that the Board would have with the landlord to see if he is agreeable. Regarding unruly behavior and crime, he stated this is not the type of establishment that would attract this type of clientele.

Attorney Hammer stated an Objector has indicated that a City Staff member was in favor of the applicant and that the report was biased. She explained that this allegation is unfounded. No one person is responsible for the preparation of Staff Reports. Before any Staff Report is finalized, it must go through several different departments and people to arrive at their recommendation.

Kim Johnsen stated she understands the concerns of light and noise problems, but felt it was very unlikely someone would cross the drainage ditch to get to the neighborhood. She also stated access is not walkable along Bell School. Scott Sanders stated he is bothered by the fact that someone would feel the Board should be making a decision based on the cost of a sandwich. Alicia Neubauer stated she had visited this site and the homes are not very well seen from the parking lot of the establishment due to the growth of cattails in between. She added that she does not feel this application is right for this location.

Attorney Hammer explained that the original Special Use Permit which allowed a restaurant use at this location is still valid.

Scott Sanders wished to add two additional conditions:

5. The application be amended to include 1626 North Bell School Road
6. Prior to operation that a six foot high sight obscuring fence be provided along the length of the western edge of the parking lot.

A **MOTION** was made by Scott Sanders to **APPROVE** the sale of liquor by the drink in conjunction with a restaurant and gaming facility in the name of Rose Mary L. Provenzano / Cucina Di Rosa, LLC d/b/a Cucina Di Rosa in a C-1, Limited Office Zoning District at 1616 and 1620 North Bell School Road with added conditions 5 and 6. The Motion was **SECONDED** by Kim Johnsen and **FAILED TO REACH A MAJORITY VOTE** by a vote of 3-3 with Tom Fabiano, Alicia Neubauer and Craig Sockwell voting Nay. The Application will move forward to the Codes and Regulations with **NO RECOMMENDATION**.

With no further business to report, the meeting was adjourned at 7:52 PM

Respectfully submitted,
Sandra A. Hawthorne, Administrative Assistant
Liquor & Tobacco Advisory Board